84083-1

NO. 267407-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent,

v.

MAURICE TERRELL BROWN, Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 07-1-00418-5

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

I. Nature of the Case

The appellant, Maurice Terrell Brown, brought this action challenging the sufficiency of the charging document and the sufficiency of the evidence to support his conviction for Escape in the Second Degree.

II. Course of the Proceedings

The appellant was charged with Escape in the Second Degree on April 10, 2007. (CP 95-96). On October 22, 2007, the appellant filed a motion to dismiss the charge based on the Benton County Jail's alleged disposal of his legal paperwork after he activated the jail's sprinkler system and caused his cell to flood. (RP 9, 11, 10/22/07; RP 82-84, 10/31/07). The court found that the actions of the jail staff did not prejudice the appellant and the motion was denied. (RP 127, 10/31/07). At no time prior to appeal did the appellant allege any insufficiencies in the charging document.

A bench trial was held on October 29 and 31, 2007, after the appellant waived his right to a jury trial. (RP 47-48, 61, 10/29/07; RP 128, 10/31/07). The appellant was found guilty of Escape in the Second Degree. (RP 139-140, 10/31/07).

III. Counter Statement of the Facts

On March 28, 2007, the appellant appeared with counsel before the court on a criminal docket requesting a furlough to attend appointments related to state funding of drug addiction treatment. (RP 64-65, 10/29/07; Ex. 1). The appellant was being held on two (2) counts of possession of methamphetamine and one count of bail jumping. (RP 64, 10/29/07). The court granted the appellant's motion and ordered that he be released between the hours of 8:00 a.m. and 10:00 a.m. on March 29, 2007. (Ex. 1). He was to remain in the custody of his father at all times and return to the jail no later than seventy-two (72) hours after his release. *Id.*

On April 1, 2007, Benton County Corrections Corporal Tim Dunn noted that the appellant had not returned to the jail as ordered within seventy-two (72) hours of his release. (RP 130, 134, 10/31/2007). Corporal Dunn contacted the appellant's father to give him the opportunity to locate the appellant and return him to the jail. (RP 130, 10/31/07). The appellant did not return to the jail until June 12, 2007, which was over two (2) months after he had been ordered to do so. (RP 131, 10/31/07).

ISSUES

I. WAS THE LANGUAGE IN THE CHARGING DOCUMENT SUFFICIENT TO PROVIDE THE APPELLANT WITH NOTICE OF THE NATURE AND CAUSE OF THE CHARGE AGAINST HIM?

II. **DID THE STATE PRESENT SUFFICIENT EVIDENCE AT TRIAL TO SUPPORT THE APPELLANT'S CONVICTION FOR ESCAPE IN THE SECOND DEGREE?**

ARGUMENT

I. **THE LANGUAGE IN THE CHARGING DOCUMENT WAS SUFFICIENT TO PROVIDE THE APPELLANT WITH NOTICE OF THE NATURE AND CAUSE OF THE CHARGE AGAINST HIM.**

The appellant argues that the language in the charging document is statutorily insufficient because it does not set forth all the elements of the crime of Escape in the Second Degree. The appellant may challenge the sufficiency of a charging document for the first time on appeal. *State v. Kjorsvik*, 117 Wn.2d 93, 102, 812 P.2d 86, 90-91 (1991). However, a challenge that is not made until after the defendant has been convicted, as in the instant matter, "will be more liberally construed in favor of validity than those challenged before or during trial." *Id.* at 102, 812 P.2d at 90.

Additionally, the standard of review requires a two-prong analysis: First, that there be "at least some language in the information giving notice of the allegedly missing element(s)," and second, if such language is present, that it cause actual prejudice to the defendant. *Id.* at 106, 812 P.2d at 92.

To be statutorily sufficient, an information must describe the crime charged "clearly and distinctly...in ordinary and concise language... in

such a manner as to enable a person of common understanding to know what is intended...". RCW 10.37.050 (6). "*[A]ll* essential elements of an alleged crime must be included in the charging document in order to afford the accused notice of the nature of the allegations so that a defense can be properly prepared." *Kjorsvik*, 117 Wn.2d at 101-2, 812 P.2d at 90.

The appellant was charged with Escape in the Second Degree. RCW 9A.76.120 (1) (b) states that, "A person is guilty of escape in the second degree if... having been charged with a felony or an equivalent juvenile offense, he or she knowingly escapes from custody...". The charging document read as follows:

> That the said MAURICE TERRELL BROWN in the County of Benton, State of Washington, on or about the 1st day of April, 2007, in violation of RCW 9A.76.120 (1) (b), after having been charged with Possession of a Controlled Substance, a felony, did escape from the custody of Benton County Jail, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington.

(CP 95-96). While the word "knowingly" does not appear in the charging language, the phrase, "contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington," adequately apprises the appellant that the State was charging him with knowingly escaping from jail.

Regarding the first prong of analysis, it is not dispositive that the word "knowingly" is not included in the charging language. The *Kjorsvik*

court noted that "it has never been necessary to use the exact words of a statute in a charging document; it is sufficient if words conveying the same meaning and import are used." 117 Wn.2d at 108, 812 P.2d at 93. When the exact words of the statute are not used, the reviewing court must determine whether the words that are used "would reasonably apprise an accused of the elements of the crime charged." *Id.* at 109, 812 P.2d at 94.

In *State v. Krajeski*, 104 Wn.App. 377, 380, 16 P.3d 69, 71 (2001), which cited extensively from *Kjorsvik*, the defendant's conviction for unlawful possession of a firearm was affirmed even though the charging document did not include knowledge as an element of possession. The *Krajeski* court, citing *State v. Niblas-Duarte*, 55 Wn.App. 376, 378, 380-82, 777 P.2d 583 (Div. I 1989), held that "under the first prong of the *Kjorsvik* test, the phrase "unlawfully and feloniously" used in Krajeski's charging document adequately apprised Krajeski that the State was charging him with knowing possession of a firearm." 104 Wn.App. at 386, 16 P.3d at 74.

The phrase, "contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Washington," is similar to the phrase "unlawfully and feloniously," in that it apprises a defendant of the element of knowledge.

Regarding the second prong of analysis, the appellant does not allege that the State's failure to include the word "knowingly" in the charging document prejudiced him in any way. That the appellant's trial counsel was not hindered by the omission of the word "knowingly" from the charging document is demonstrated by the fact that counsel asked both of the State's witnesses a series of questions relating to whether the appellant had knowledge that he was supposed to return to jail in seventy-two (72) hours. (RP 65-67, 10/29/07; RP 133-4, 10/31/07). The trial court, in issuing its ruling, evaluated and then rejected the appellant's argument that he did not have knowledge of the furlough order:

> Mr. Brown...was aware of the length of the furlough and failed to return...Mr. Brown knowingly failed to return to the detention facility after being granted a furlough.

(RP 139, 10/31/07). The language in the charging document was sufficient to apprise the appellant of the charges against him, including the element of knowledge.

II. THE STATE PRESENTED SUFFICIENT EVIDENCE AT TRIAL TO SUPPORT THE APPELLANT'S CONVICTION FOR ESCAPE IN THE SECOND DEGREE.

Sufficient evidence exists to support the appellant's conviction for Escape in the Second Degree. Evidence is sufficient to support a finding of guilt if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find the essential elements of the

crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220, 616 P.2d 628 (1980). When a defendant challenges the sufficiency of the evidence on appeal, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The reviewing court is not required to determine whether it believes the evidence presented at trial proves guilt beyond a reasonable doubt, only that a reasonable fact-finder could have found guilt beyond a reasonable doubt based on such evidence. *Green*, 94 Wn.2d at 221, 616 P.2d at 632.

In evaluating the sufficiency of the evidence on appeal, the court is obliged to defer to the trier of fact to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences there from. *State v. Hayes*, 81 Wn. App. 425, 430, 914 P.2d 788, 792, *review denied*, 130 Wn.2d 1013, 928 P.2d 413 (1996). Furthermore, circumstantial evidence is considered as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 637, 618 P.2d 99, 101 (1980).

In the instant case, the State called two (2) witnesses at the appellant's trial. A custodian of records from the Benton County Clerk's Office testified that on March 28, 2007, the appellant was being held in the Benton County Jail on $10,000 bail for two (2) counts of possession of methamphetamine and bail jumping. (RP 64, 10/29/07). The custodian of

records also testified that on that same date, on a criminal docket, the appellant was present when his attorney presented a motion for a seventy-two (72) hour furlough. *Id.* The custodian of records further testified that the motion was granted. (RP 65, 10/29/07). The State subsequently introduced into evidence the order authorizing a seventy-two (72) hour furlough to begin on March 29, 2007. *Id.*

The State's second witness, Corporal Dunn, testified that the appellant was released from jail pursuant to the furlough, and did not return as scheduled on April 1, 2007. (RP 130, 10/31/07). Corporal Dunn stated that the appellant did not return to the jail until June 12, 2007. (RP 131, 10/31/07).

In issuing its ruling, the trial court inferred from the evidence, as it is permitted to do, that the seventy-two (72) hour furlough was granted in open court when the appellant was present and that he, therefore, was aware of the length of the furlough. (RP 139, 10/31/07). Because a rational trier of fact could find the appellant guilty, sufficient evidence was presented to uphold the appellant's conviction.

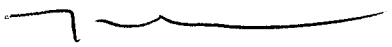
CONCLUSION

The language in the charging document was sufficient to provide the appellant with notice of the nature and cause of the charges against him. Additionally, the State presented sufficient evidence at trial to

support a finding of guilty on the charge of Escape in the Second Degree. Based on the foregoing, the State respectfully requests that the decision of the trial court be affirmed.

RESPECTFULLY SUBMITTED this 9th day of October, 2008.

ANDY MILLER
Prosecuting Attorney



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